

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

NEODRON LTD., ATMEL
CORPORATION, and ATMEL GLOBAL
SALES LTD.,

Defendants.

No. 2:20-CV-01216-JLR

COMPLAINT AND JURY DEMAND

[REDACTED VERSION]

1 Plaintiff Microsoft Corporation (“Microsoft”), for its Complaint against Neodron Ltd.
2 (“Neodron”), Atmel Corporation, and Atmel Global Sales Ltd. (collectively, “Atmel”), hereby
3 alleges and prays as follows:

4 **INTRODUCTION**

5 1. Microsoft brings this lawsuit seeking specific performance of a covenant not to
6 sue, damages for breach of contract, and a declaratory judgment regarding indemnity obligations.
7 Neodron is bound by a component purchase agreement (“CPA”) that prohibits Neodron from
8 bringing certain patent infringement claims against Microsoft. Despite this prohibition, Neodron
9 has filed nine patent infringement actions against Microsoft in violation of the covenant.
10 Microsoft therefore seeks an Order enjoining Neodron from the continued pursuit of these
11 prohibited patent claims as well as damages to compensate for Neodron’s breach. Atmel has
12 also breached the CPA and the covenant of good faith and fair dealing by enabling Neodron’s
13 patent claims and by refusing to defend and indemnify Microsoft from them. Microsoft seeks a
14 judgment that Atmel has a duty to defend, and a declaration that Atmel has a duty to indemnify,
15 Microsoft with regard to certain of Neodron’s claims.

16 2. Neodron acquired the patents asserted against Microsoft from Atmel pursuant to a
17 Patent Sale and Assignment Agreement (“PSA”). Neodron separately and independently agreed
18 with Atmel that its purchase of the patents would be subject to encumbrances set forth in the
19 PSA, which necessarily includes the covenant not to sue provision in the CPA. Microsoft is a
20 third-party beneficiary of the PSA and is entitled to enforce the obligations imposed on Neodron
21 by the PSA. Consequently, by bringing a multitude of patent infringement actions around the
22 world, Neodron has breached not only the CPA, but the PSA as well.

23 **PARTIES**

24 3. Plaintiff Microsoft is a publicly traded corporation organized under the laws of
25 the State of Washington with its principal place of business in Redmond, Washington.
26

1 4. On information and belief, Defendant Neodron is an Irish company with its
2 principal place of business in Dublin, Ireland. Neodron is a non-practicing entity that was
3 formed in December 2018 to acquire the touch technology patents that Neodron has asserted
4 against Microsoft.

5 5. On information and belief, Defendant Atmel Corporation is a Delaware
6 corporation with its principal place of business in Chandler, Arizona. In 2016, Atmel
7 Corporation was acquired by Microchip Technology Incorporated (“MTI”). According to MTI,
8 Atmel maintains a separate corporate existence as a wholly owned subsidiary of MTI.

9 6. On information and belief, Defendant Atmel Global Sales Ltd. is a Labuan
10 company with its principal place of business in Labuan, Malaysia. In 2016, Atmel Global Sales
11 Ltd. was acquired by MTI.

12 **JURISDICTION AND VENUE**

13 7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
14 § 1332(a) because the matter in controversy exceeds the sum or value of \$75,000, exclusive of
15 costs and interest, and there is complete diversity of citizenship between the parties. This Court
16 has jurisdiction to enter declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.
17 Code § 2201.

18 8. This Court has personal jurisdiction over Neodron because Neodron purposefully
19 availed itself of the rights and privileges of this jurisdiction when it acquired the Atmel patents
20 subject to the encumbrances imposed by the CPA and the PSA. [REDACTED]

21 [REDACTED] Moreover, since its acquisition of
22 patents from Atmel, Neodron has separately agreed to avail itself of the privileges of doing
23 business in the state of Washington regarding this dispute by [REDACTED]

24 [REDACTED] The interests of justice
25 and fair play are served by the exercise of personal jurisdiction over Neodron. Venue is also
26 proper under 28 U.S.C. § 1391(b) for this reason.

A. Microsoft's Pre-Existing Covenants With Atmel

11. Under the CPA, [REDACTED]
[REDACTED] For
the remainder of this Complaint, “Products” are referred to as “Atmel Components” or
“Components.”

13. Under the CPA, Atmel covenanted that it would

[REDACTED]

[REDACTED] This covenant not to sue only applies during the “CNS Period,” which is defined in the CPA as:

(Emphasis added).

14. Further,

15. The CPA contains a forum selection clause for disputes concerning the applicability or interpretation of the covenant not to sue provision

16. In 2014, Atmel and Microsoft agreed that the CPA would extend until August 12, 2016, at which point it would then automatically extend on a yearly basis, unless either party terminated the agreement in writing. Neither party has terminated the CPA.

B. Atmel's Patent Sale to Neodron

17. In December 2018, Neodron entered into the PSA with Atmel and MTI. Pursuant to the PSA, Neodron acquired the right, title, and interest in and to a number of touch technology patents from Atmel. These included all of the patents that Neodron has since asserted against Microsoft except U.S. patent number 8,749,251 ("251 Patent"), which was sold to Solas OLED Ltd. on December 21, 2018, then assigned to Neodron on September 19, 2019.

C. Neodron's Patent Infringement Lawsuits against Microsoft and its Breach of the Covenant Not to Sue

18. As of the date of this complaint, Neodron has sued Microsoft nine different times in four different jurisdictions for allegedly infringing patents that had previously belonged to Atmel. Specifically, Neodron has sued Microsoft twice in the United States International Trade Commission for allegedly infringing U.S. patents numbers 8,432,173 ("173 Patent"); 8,791,910 ("910 Patent"), 9,024,790 ("790 Patent"), 9,372,580 ("580 Patent"), 7,821,425 ("425 Patent"), 7,903,092 ("092 Patent"), and the '251 Patent; three times in the United States District Court for the Western District of Texas for allegedly infringing the '173, '910, '790, '580, '425, '920, and '251 Patents and U.S. patent numbers, 8,102,286, 9,086,770, 8,946,574, 8,502,547, and 10,088,960; twice in China for allegedly infringing patent numbers CN104111762B and CN101390290B; and twice in Germany for allegedly infringing patent numbers EP 1,964,265 B1 and DE 10,2014,207,005 B4. In each of those these actions, Neodron accuses Microsoft of patent infringement arising from Microsoft's sale and import of Microsoft Devices that incorporate Components purchased under the CPA.

D. Atmel's Obligations to Defend and Indemnify Microsoft with respect to Neodron's Patent Infringement Lawsuits

19. Pursuant to the CPA, Atmel agreed to defend and indemnify Microsoft against all claims

[REDACTED]

20. Microsoft has provided reasonable notice and tendered its defense and indemnification obligations to Atmel for all nine of Neodron's patent infringement lawsuits.

CAUSES OF ACTION

**FIRST CAUSE OF ACTION:
NEODRON'S BREACH OF THE COVENANT NOT TO SUE**

21. Microsoft incorporates and realleges Paragraphs 1 through 20 of this Complaint, as if set forth fully herein.

22. Neodron acquired the Atmel patents subject to encumbrances, including the CPA's covenant not to sue Microsoft for selling or importing Microsoft Devices that contain Components sold under the CPA. When Neodron sued Microsoft for patent infringement, accusing Microsoft Devices that contain Components sold under the CPA, it breached the covenant not to sue provision of the CPA.

23. Microsoft is entitled to a judgment and declaration that Neodron has breached the CPA's covenant not to sue provision and an injunction of specific performance of the CPA, as well as an injunction barring Neodron from pursuing or assisting in any assertion of former Atmel patents against relevant Microsoft Devices for the remainder of the CNS Period.

**SECOND CAUSE OF ACTION:
NEODRON'S BREACH OF THE PATENT SALE AND ASSIGNMENT AGREEMENT**

24. Microsoft incorporates and realleges Paragraphs 1 through 23 of this Complaint, as if set forth fully herein.

25. In the PSA, Neodron agreed to take Atmel's patents subject to encumbrances.

26. Microsoft is a third-party beneficiary of the PSA due to the agreement specifically referencing encumbrances on Atmel's patents, such as the covenant not to sue provision in the CPA.

27. Microsoft is entitled to a judgment and declaration that Neodron has breached the PSA by not honoring the benefits owed to Microsoft as a third-party beneficiary of that agreement.

1 28. Microsoft is also entitled to recover damages caused by Neodron's breach,
2 including attorneys' fees, costs and expenses of defending Neodron's lawsuits against Microsoft
3 and its customers.

4 **THIRD CAUSE OF ACTION:**
5 **ATMEL'S BREACH OF THE COVENANT NOT TO SUE**

6 29. Microsoft incorporates and realleges Paragraphs 1 through 28 of this Complaint,
7 as if set forth fully herein.

8 30. Atmel covenanted that it would not assert a claim for patent infringement against
9 Microsoft Devices that contain Atmel Components subject to the CPA. Despite that promise,
10 Atmel sold its patents to Neodron to enable Neodron to do just that.

11 31. Microsoft is entitled to a judgment and declaration that Atmel has breached the
12 covenant not to sue in the CPA, or an injunction of specific performance of the CPA, and an
13 injunction barring Atmel from pursuing or assisting in any assertion of former Atmel patents
14 against any Microsoft Device for the remainder of the CNS Period.

15 **FOURTH CAUSE OF ACTION:**
16 **ATMEL'S BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

17 32. Microsoft incorporates and realleges Paragraphs 1 through 31 of this Complaint,
18 as if set forth fully herein.

19 33. Under Washington law, every contract contains "an implied duty of good faith
20 and fair dealing" that "obligates the parties to cooperate with each other so that each may obtain
21 the full benefit of performance." *Rekhter v. State, Dep't of Soc. & Health Servs.*, 180 Wn.2d
22 102, 112–13, 323 P.3d 1036, 1041 (2014) (quoting *Badgett v. Sec. State Bank*, 116 Wn.2d 563,
23 569, 807 P.2d 356 (1991)).

24 34. Microsoft formed a business relationship with Atmel. Microsoft expected that the
25 Microsoft Devices built with Atmel Components would not be accused of infringing Atmel's
26 patents. Microsoft expected that Atmel would not orchestrate the sale of its patents to Neodron
for the purpose of enabling and encouraging Neodron to sue Microsoft. Atmel's purported

1 transfer to Neodron sought to deprive Microsoft of a key benefit of its bargain. Atmel's failure
2 to honor its obligations to Microsoft violates the duty of good faith and fair dealing.

3 35. Microsoft is entitled to a judgment that Atmel has breached the covenant of good
4 faith and fair dealing in the CPA and an injunction barring Atmel from any further acts that
5 frustrate the benefits Microsoft was entitled to under that CPA, including the covenant not to sue.

6 36. Microsoft is also entitled to recover damages caused by Atmel's breach, including
7 attorneys' fees, costs and expenses of defending Neodron's lawsuits against Microsoft and its
8 customers.

9 **FIFTH CAUSE OF ACTION:**
10 **ATMEL'S BREACH OF ITS DUTY TO DEFEND MICROSOFT**

11 37. Microsoft incorporates and realleges Paragraphs 1 through 36 of this Complaint,
12 as if set forth fully herein.

13 38. Atmel has a duty to defend Microsoft in Neodron's patent infringement lawsuits.
14 Atmel agreed to defend Microsoft for [REDACTED]
15 [REDACTED] Neodron has accused
16 Microsoft Devices, which are enabled by Atmel Components, of patent infringement. In other
17 words, [REDACTED]
18 [REDACTED]

19 39. Microsoft has notified Atmel pursuant to the terms of the CPA of its duty to
20 defend Microsoft against Neodron's patent infringement lawsuits.

21 40. Microsoft has fully performed its obligations under the CPA and has satisfied the
22 CPA's conditions.

23 41. Microsoft has incurred and will continue to incur costs defending itself against
24 Neodron's patent infringement lawsuits. Atmel's failure to defend Microsoft is a breach of the
25 CPA for which Microsoft is entitled to recover damages.
26

**SIXTH CAUSE OF ACTION:
ATMEL'S BREACH OF ITS DUTY TO INDEMNIFY MICROSOFT**

42. Microsoft incorporates and realleges Paragraphs 1 through 41 of this Complaint, as if set forth fully herein.

43. Atmel has a duty to indemnify Microsoft in Neodron's patent infringement lawsuits. Atmel agreed to indemnify Microsoft for [REDACTED] Neodron has accused Microsoft Devices, which are enabled by Atmel Components, of patent infringement. In other words, [REDACTED] If Neodron prevails, Atmel is obligated to indemnify Microsoft.

44. Microsoft has fully performed its obligations under the CPA and has satisfied all of the CPA's conditions.

45. Microsoft will be damaged through no fault of its own if Neodron is successful in its patent infringement lawsuits. As a result, Microsoft is entitled to declaratory judgment that Atmel is obligated under the terms of the CPA to fully and timely indemnify and pay for any harm incurred by Microsoft in Neodron's patent infringement lawsuits.

JURY DEMAND

46. Pursuant to Federal Rule of Civil Procedure 38(b), Microsoft demands a trial by jury as to all issues so triable in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Microsoft prays for the following relief:

- a. A judgment and declaration that Neodron has breached the covenant not to sue provision in the CPA;
- b. Specific performance of the covenant not to sue in the form of temporary and permanent injunctive relief barring Neodron from pursuing its pending

lawsuits based on Microsoft Devices covered by the covenant not to sue provision in the CPA;

c. A judgment and declaration that Neodron breached the PSA by refusing to recognize encumbrances on its patents;

d. A judgment and declaration that Atmel has breached the covenant not to sue provision in the CPA;

e. A judgment that Atmel has breached the covenant of good faith and fair dealing;

f. A judgment that Atmel is obligated to pay all defense expenses, including reasonable attorneys' fees and costs, that Microsoft has incurred and will incur from defending itself against Neodron's patent infringement lawsuits;

g. A declaration that Atmel is obligated to indemnify Microsoft for any resulting judgment against Microsoft as a result of Neodron's patent infringement lawsuits; and

h. Such other relief awarded in favor of Microsoft and against Atmel as is deemed just and equitable.

1
2 DATED: September 15, 2020

By: /s/ T. Andrew Culbert

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CERTIFICATE OF SERVICE

I certify that I will cause the foregoing document to be served on the following parties by the method(s) indicated.

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DATED this 15th day of September, 2020.

/s/ T. Andrew Culbert

T. Andrew Culbert